



TEXAS GENERAL LAND OFFICE

DISASTER RECOVERY PROGRAM

**LEAD-BASED PAINT MITIGATION POLICY
STANDARD OPERATING PROCEDURE**

- 1.0 Purpose**
- 2.0 Reference Regulations**
- 3.0 Definition of Terms**
- 4.0 Responsibilities**
- 5.0 Procedure**

1.0 Purpose

This document sets forth CDBG-DR Program policy for implementation of the United States Department of Housing and Urban Development (HUD) Lead Safe Housing Rule found at 24 C.F.R. Part 35 and related regulations. The Rule and this policy detail the steps that Contractors and Sub-recipients (and/or their grant administrators) must take before, during, and after rehabilitation or acquisition of pre-1978 housing using CDBG-DR funds. This policy applies to recipients, sub-recipients, contractors, and sub-contractors of HUD CDBG-DR funding that support Housing activities.

2.0 Reference Regulations

HUD's Lead Safe Housing Rule (LSHR) (24 CFR Part 35, Subparts A, B, J, K and R)
EPA's Renovation, Repair, and Painting Rule (RRP) (40 CFR Part 745, Subpart E)
Texas Environmental Lead Reduction Rules (TELRR §295.201- §295.220)

3.0 Definition of Terms

Abatement – Any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. Abatement includes:

- 1) The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and
- 2) All preparation, cleanup, disposal and post abatement clearance testing activities associated with such measures.

Clearance Examination - An activity conducted by a State-certified Lead Inspector or Risk Assessor, following lead-based paint hazard reduction activities, to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards exist in the dwelling unit or worksite. The clearance process includes a visual assessment and collection and analysis of environmental samples.

Housing activity - Rehabilitation or acquisition of any housing edifice constructed prior to 1978, except housing for the elderly or persons with disabilities (unless a child of less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more, or other age if recognized as elderly by a specific Federal housing assistance program.

Interim Controls – A set of measures designed to reduce temporary human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to: repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident-education programs.

Lead-Based Paint Hazards - Any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects as established

by the proper federal agency. (See 40 CFR §745.65 for detailed explanation of paint-lead hazard, dust-lead hazard, and soil-lead hazard.)

Risk Assessment – An on-site reconnaissance investigation to determine and report the existence, nature, severity and location of lead-based paint hazards in residential dwellings including:

- 1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;
- 2) Visual Inspection;
- 3) Limited wipe sampling or other environmental sampling techniques;
- 4) Other activity as may be appropriate; and
- 5) Provision of a report explaining the results of the investigation.

4.0 Responsibilities

General Land Office (GLO):

- The GLO maintains its right to audit any and all aspects of contractors' compliance with applicable laws and regulations which includes LBP removal practices. Unannounced audits will be conducted by the GLO at their discretion. Contractor non-compliance with environmental and LBP regulations will be viewed as a breach of contract and addressed pursuant to contract rights and remedies available to the GLO.

Sub-recipient:

- Sub-recipient provides the applicant with two publications put out by the United States Environmental Protection Agency (EPA) during the intake/eligibility review phase. The first, provided directly by the Sub-recipient, is the EPA [*Protect Your Family From Lead in Your Home*](#) pamphlet, for which the acknowledgement of receipt must be completed by signature on the GLO *Form 12.01 Receipt of Lead Paint Notification*. The second, provided by the construction contractor, is the EPA [*The Lead-Safe Certified Guide to Renovate Right*](#), which includes an acknowledgement form at the back of the pamphlet. Both acknowledgment forms must be obtained by the Sub-recipient and kept in the applicant's file for three years after completion of construction. This education early in the process does not absolve the contractors from their responsibility with the EPA pursuant to the requirements of their certifications.
- Sub-recipient conducts a Lead Based Paint Risk Assessment for pre-1978 rehabilitation projects. The completed risk assessment is provided to both the homeowner (applicant) within 15 calendar days of the date when the Sub-recipient receives the report in accordance with 24 CFR 35.125, Notice of evaluation and hazard reduction activities, and to the contractor prior to construction.
- Sub-recipient provides the homeowner (applicant) with a Notice of hazard reduction activity (Lead Based Paint Clearance Exam) not more than 15 calendar days after the hazard reduction activities (including paint stabilization) have been complete. The clearance exam documents the presence or absence of a known lead-based paint hazard at the time of turnover of the home to the applicant. The Program will not permit the turnover of a home to an applicant with a known lead-based paint hazard present.
- Sub-recipient will perform unannounced site visits checking for compliance with Lead Safe Work Practices (LSWP). Sub-recipient will use the EPA LSWP checklist as the guide for the verification. Failures or warnings identified during these site visits will count the same as a failed inspection on contractor's quality ratings for future assignments.

***Note:** All activities disturbing paint surfaces on pre-1978 housing **must** be performed or directed by an EPA Certified Firm.

5.0 Procedure

The GLO adheres to requirements set forth in HUD's Lead Safe Housing Rule (LSHR) and related regulation for all housing activity in the CDBG-DR program. Participants in the program are thus responsible for like adherence and are encouraged to refer to HUD's [*The Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*](#) for clarification of role.

5.1 Acquisition

In the case of the acquisition of a pre-1978 home, the Sub-recipient is responsible for visual assessment, paint stabilization, and maintenance. Sub-recipients must adhere to mitigation and hazard reduction requirements according to 24 CFR Part 35, Subpart K, and are responsible for the activities listed in the table below.

Table 1. Required Activities to address Lead-based Paint in a pre-1978 home

Homebuyer (Acquisition) – Required Activities to address Lead-based Paint	
Notification (35.1010)	<ul style="list-style-type: none">• Pamphlet and Disclosure• Notice of Lead Hazard Evaluation or Presumption, if applicable• Notice of Lead Hazard Reduction Activity
Lead Hazard Evaluation (35.1015)	<ul style="list-style-type: none">• Visual Assessment
Lead Hazard Reduction (35.1015)	<ul style="list-style-type: none">• Paint Stabilization• Safe Work Practices (EPA Certified Firm & Certified Renovator)• Clearance
EIBLL Requirements	<ul style="list-style-type: none">• No requirements
Ongoing Maintenance	<ul style="list-style-type: none">• No requirements
Options	<ul style="list-style-type: none">• Perform paint testing on deteriorated paint. If the paint is not lead-based paint, paint stabilization and clearance are not required.

The GLO recommends using the option for testing of deteriorated paint. Once areas of deteriorated paint are tested, then only the areas in which lead-based paint was identified would trigger a lead-hazard reduction activity (paint-stabilization, safe work practices, and clearance).

5.2 Rehabilitation

In the case of rehabilitation, during the environmental review, the Sub-recipient is responsible for determining the proper level of LBP evaluation and any LBP hazard reduction requirements according to the regulatory requirements found in 24 CFR Part 35, Subpart J. Detailed

information concerning the requirements, whether lead safe work practices are in conjunction with paint stabilization, interim controls, or abatement, must be provided in the rehabilitation scope of work for each home. Additionally, sub-recipients will need to conduct an LBP risk assessment and provide documentation of all findings to construction contractors.

Construction contractors participating in the program must be EPA Certified Firms and are responsible for ensuring overall compliance with the EPA’s Lead-Based Paint Renovation, Repair, and Painting (RRP) Program, found in 40 CFR, Part 745, Subpart E. Requirements include:

1. Documents of certification must be maintained and are subject to audit at any time. To ensure all staff are effectively aware of safety practices, contract firms should have a procedural manual or instructional guidebook.
2. In the case of rehabilitation, no more than 60 days before beginning renovation activities, contractors are required to distribute a copy of the EPA’s [*The Lead-Safe Certified Guide to Renovate Right*](#) pamphlet to the homeowner and retain the signed acknowledgement form, and the sub-recipient with a copy to be retained for three years after completion of construction. To document compliance in the CDBG-DR program, contractors must submit a copy of the acknowledgement forms to the sub-recipient prior to requesting and receiving a notice to proceed (NTP) for a pre-1978 rehabilitation project.
3. Contractor Firm Certification pursuant to EPA’s Renovation, Repair, and Painting Rule (RRP) (40 CFR Part 745, Subpart E) requires contractors to document compliance with the requirements of 745.85, Work Practice Standards. The information required may be provided by completing the sample form in the EPA Small Entity Compliance Guide to Renovate Right titled “Sample Renovation Recordkeeping Checklist” or a similar form containing the information required by 745.86(b)(1)(ii) and the training and work practice compliance information required by 745.86(b)(6). In order to document compliance with this requirement, contractors must provide a copy of the completed checklist to the Sub-recipient inspector at the time of final inspection. Pictures will be taken of the completed checklist items for any pre-1978 rehabilitation project and will be a requirement to pass a final program inspection.
4. Contractors are required to ensure that they only use properly trained and certified employees and trades when performing work on pre-1978 rehabilitation projects. This requirement includes not only EPA requirements but also HUD’s Lead Safe Housing Rule and any other Federal, State, or local laws. Contractor non-compliance with the Uniform General Conditions, or any other conditions stated in contracts with the Texas General Land Office represents a breach of contract and will be addressed by the GLO through any and all remedies included in the home builder contract or available to the State.
5. Contractors are required to provide certification to the owner of the building, pursuant to 40 CFR Part 745.86(c)(1)(i)(ii) that all residential property rehabilitation activities regulated by the HUD and the EPA performed under the contract were completed in accordance with 40 CFR Part 745.85 – Work Practice Standards. To document compliance with this requirement, contractors must provide a copy of the certification provided to the owner of the building to the Sub-recipient LBP Team when requesting LBP Clearance Examination.

Table 2. LBP Mitigation Requirements based on Per Unit Level of Rehabilitation Assistance

Level of Assistance	Hazard Reduction Requirements	Post-Rehabilitation Clearance Examination Requirements
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Less than or equal to \$5,000	Safe work practices during rehabilitation in conjunction with paint stabilization	Yes
More than \$5,000 up to \$25,000	Interim controls	Yes
More than \$25,000	Abatement and/or Interim controls	Yes

The GLO offers form 12.04 Lead Safe Housing Requirements Screening Worksheet (adapted from the HOME program) as a convenient tool for Sub-recipients and or contractors to assess for property exemptions from 24 CFR Part 35.

Note: HUD's LSHR requires the use of properly trained individuals to perform hazard reduction activities. **ALL individuals who disturb painted surfaces above HUD's de minimis levels must be formally trained in "Lead-safe Work Practices". A list of acceptable training courses can found by accessing the following HUD website. <http://www.hud.gov/offices/lead/training/hudtraining.pdf>*